

COPY
ORIGINAL

United States District Court

MIDDLE DISTRICT OF FLORIDA

THOMAS B. McCOUN III
UNITED STATES MAGISTRATE JUDGE

UNITED STATES COURTHOUSE
801 NORTH FLORIDA AVENUE, STE. 1254
TAMPA, FLORIDA 33602-3800
(813) 301-5550

December 3, 2003

Linda G. Moreno
Law Office of Linda Moreno
1718 E. 7th Ave., Suite 201
Tampa, FL 33605

Re: USA v. Sami Al-Arian, et al., Case No. 8:03-cr-77-T-30TBM

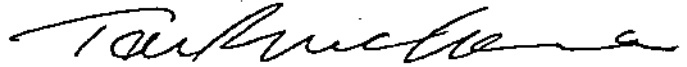
Dear Counsel,

Subsequent to the last discovery conference, I requested my courtroom deputy to retrieve the sealed magistrate files containing the search warrants and warrant application(s) for the 1995 searches of the residence and office of Mr. Al-Arian, and the offices of WISE. My deputy reports that these original court files no longer exist. As explained in the attached memorandum, in March 1998, clerks in the Tampa division began shredding magistrate judge files more than five years old based on a misreading of the applicable provisions of the Guide to Judiciary Policies and Procedures. This shredding included sealed files kept in the court's vault. Before the error was discovered, *all* such magistrate files dating from prior to (about) mid-1996 were destroyed. Fortunately the problem that this circumstance creates has arisen in only one other case, entirely unrelated to the instant matter. Unfortunately, the court itself has no means of reconstructing the magistrate files at issue.

Upon learning of the loss of these files, my chambers contacted the U.S. Attorney's Office and the FBI to request a search of their files for a certified or duplicate copy of the warrants, the applications, and any affidavit in support thereof. By my best recollection, there was a single supporting affidavit for all three of the applications and warrants at issue. The FBI has advised that the search was actually initiated by INS (nka ICE). ICE has been brought into the loop and they too are searching for copies. When appropriate motions are filed by defense counsel requesting the unsealing of these documents, I intend to enter an order granting the motions. The order will further direct that the government continue its search for copies of the warrants and accompanying documents and upon their location, file such copies with the court. I will then review the documents to satisfy myself as to their accuracy and copies will be disseminated to all parties.

The court shares your concerns about this unfortunate circumstance, but believes that the matter will be satisfactorily resolved in the near future.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tom McCoun III".

Thomas B. McCoun III

TBM/src

United States District Court

MIDDLE DISTRICT OF FLORIDA

THOMAS B. MCCOUN III
UNITED STATES MAGISTRATE JUDGE

UNITED STATES COURTHOUSE
801 NORTH FLORIDA AVENUE, STE. 1254
TAMPA, FLORIDA 33602-3800
(813) 301-5550

December 3, 2003

William B. Moffitt
Asbill Moffitt & Boss, Chtd.
The Pacific House
1615 New Hampshire Ave., N.W.
Washington, DC 20009

Re: USA v. Sami Al-Arian, et al., Case No. 8:03-cr-77-T-30TBM

Dear Counsel,

Subsequent to the last discovery conference, I requested my courtroom deputy to retrieve the sealed magistrate files containing the search warrants and warrant application(s) for the 1995 searches of the residence and office of Mr. Al-Arian, and the offices of WISE. My deputy reports that these original court files no longer exist. As explained in the attached memorandum, in March 1998, clerks in the Tampa division began shredding magistrate judge files more than five years old based on a misreading of the applicable provisions of the Guide to Judiciary Policies and Procedures. This shredding included sealed files kept in the court's vault. Before the error was discovered, *all* such magistrate files dating from prior to (about) mid-1996 were destroyed. Fortunately the problem that this circumstance creates has arisen in only one other case, entirely unrelated to the instant matter. Unfortunately, the court itself has no means of reconstructing the magistrate files at issue.

Upon learning of the loss of these files, my chambers contacted the U.S. Attorney's Office and the FBI to request a search of their files for a certified or duplicate copy of the warrants, the applications, and any affidavit in support thereof. By my best recollection, there was a single supporting affidavit for all three of the applications and warrants at issue. The FBI has advised that the search was actually initiated by INS (nka ICE). ICE has been brought into the loop and they too are searching for copies. When appropriate motions are filed by defense counsel requesting the unsealing of these documents, I intend to enter an order granting the motions. The order will further direct that the government continue its search for copies of the warrants and accompanying documents and upon their location, file such copies with the court. I will then review the documents to satisfy myself as to their accuracy and copies will be disseminated to all parties.

The court shares your concerns about this unfortunate circumstance, but believes that the matter will be satisfactorily resolved in the near future.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas B. McCoun III', with a stylized flourish at the end.

Thomas B. McCoun III

TBM/src



**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA**

OFFICE OF THE CLERK
80 North Hughey Avenue
Orlando, Florida 32801-2278

Sheryl L. Loesch
Clerk of Court

Tel.: 407-835-4222
Fax: 407-835-4228

June 18, 2002

Robert Lowney, Chief
Administrative Office of the US Courts
District Court Administration Division/4-528
Thurgood Marshall Federal Judiciary Building
Washington, DC 20544

Dear Mr. Lowney:

I want to alert you to a situation that has recently come to light in our Tampa Division. Prior to the Court's move into the Sam M. Gibbons Courthouse and under the leadership of a former Tampa division manager, members of the Clerk's Office staff in Tampa purged closed files in an effort to avoid the unnecessary relocation of files into the new building. During this time, records management information regarding the destruction of Magistrate Judge case files was researched in the Guide to Judiciary Policies and Procedures and it was determined (incorrectly) that all closed Magistrate Judge case files could be destroyed after 5 years. In March 1998, all closed Magistrate Judge files for the years 1987-1993 were shredded. What the Guide clearly states is that only closed misdemeanor and petty offense case files may be destroyed after 5 years. Docket sheets on the destroyed files, however, were not destroyed and are still maintained in the Clerk's Office as well as all Magistrate Judge case logs dating back to 1987.

In April of this year, some members of the Clerk's Office staff in Tampa began shredding closed Magistrate Judge case files from 1996. When Tampa's current division manager became aware of this, she immediately questioned whether or not it is permissible to shred all closed Magistrate Judge case files over 5 years old. She immediately instructed her staff to cease the destruction of the closed 1996 Magistrate Judge case files until more research was done. Upon researching the Guide, the division manager found that only closed misdemeanor and petty offense case files may be destroyed after 5 years. At that point, about half of the closed Magistrate Judge case files from 1996 had been shredded. Again, all docket sheets from the shredded case files are still maintained in the Clerk's Office.

Unfortunately, there is nothing we can do to remedy this situation other than preventing it from happening again. Subsequent to the destruction of the 1987-1993 files, only one inquiry has been made regarding one of those case files and a certified copy of the docket sheet was provided and adequately satisfied the inquiry. If future inquiries should come in regarding any of the shredded case files in which docket sheets do not provide adequate information, the Clerk's Office staff will contact the U.S. Attorney's Office in an attempt to recreate that file. Hopefully this will not happen.

Jacksonville Division
U.S. Courthouse
311 West Monroe Street
Jacksonville, FL 32201

Ocala Division
U.S. Courthouse
207 N.W. Second Ave.
Ocala, FL 34475

Orlando Division
U.S. Courthouse
80 N. Hughey Avenue
Orlando, FL 32801

Tampa Division
U.S. Courthouse
801 N. Florida Avenue
Tampa, FL 33602

Fort Myers Division
U.S. Courthouse
2110 First Street
Fort Myers, FL 33901

June 18, 2002

Page 2

If you have any questions or comments about this unfortunate occurrence, please feel free to contact me at the above address. Thank you.

Sincerely,


Sheryl L. Loesch
Clerk of Court

SLL/emw

cc: Chief Judge Kovachevich

Jacksonville Division
U.S. Courthouse
311 West Monroe Street
Jacksonville, FL 32201

Ocala Division
U.S. Courthouse
207 N.W. Second Ave.
Ocala, FL 34475

Orlando Division
U.S. Courthouse
60 N. Hughey Avenue
Orlando, FL 32801

Tampa Division
U.S. Courthouse
801 N. Florida Avenue
Tampa, FL 33602

Fort Myers Division
U.S. Courthouse
2110 First Street
Fort Myers, FL 33901